

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA

3 THIS DOCUMENT APPLIES TO  
4 PLAINTIFF(S): KAREN BURGETT,  
5 INDIVIDUALLY AND AS SUCCESSOR-  
6 IN-INTEREST OF THE ESTATE OF PAUL  
BURGETT, DECEASED

7 Plaintiff(s)

8 v.

9  
10 ☐ AMYLIN PHARMACEUTICALS, LLC,  
11 ☐ ELI LILLY AND COMPANY,  
12 ☒ MERCK SHARP & DOHME CORP.,  
☐ NOVO NORDISK INC.,

13 (Check all the above that apply)

14 Defendants

Pertains To Civil Action No.:  
3:14-cv-00995-AJB-MDD

In Re: Incretin-Based Therapies  
Products Liability Litigation

**MDL NO. 2452**

**FIRST AMENDED SHORT  
FORM COMPLAINT FOR  
DAMAGES**

Case No.:  
13md2452 AJB(MDD)

15 **FIRST AMENDED SHORT FORM COMPLAINT FOR DAMAGES**

16 COMES NOW the Plaintiff(s) named herein, and for Complaint against the  
17 Defendants named herein, incorporates and fully adopts the Master Form Complaint  
18 (the "Master Complaint") in MDL No. 2452 by reference. Plaintiff(s) further shows  
19 the Court as follows:

20 **JURISDICTION AND VENUE**

21 1. Jurisdiction in this Complaint is based on:

22 ☒ Diversity of Citizenship

23 ☐ Other (As set forth below, the basis of any additional ground for  
24 jurisdiction must be pleaded in sufficient detail as required by the  
25 applicable Federal Rules of Civil Procedure): \_\_\_\_\_.

26 2. District Court and Division in which you might have otherwise filed  
27 absent the direct filing order entered by this Court: Northern District of Ohio,  
28 Eastern Division.

1           3.     Plaintiff(s) further adopts the allegations contained in the following  
2 paragraphs of the Jurisdiction and Venue section of the Master Complaint:

3           [X] Paragraph 10;

4           [X] Paragraph 11;

5           [X] Paragraph 12;

6           [X] Paragraph 13;

7           [X] Paragraph 14;

8           [X] Paragraph 15; and/or

9           [ ] Other allegations as to jurisdiction and venue (Plead in sufficient detail  
10 in numbered paragraphs (numbered to begin with 3(a)) as required by the  
11 applicable Federal Rules of Civil Procedure): \_\_\_\_\_.

12                           PLAINTIFF/INJURED PARTY INFORMATION

13           4.     Injured/Deceased Party's Name: Paul Burgett (the "Injured Party").

14           5.     Any injury (or injuries) suffered by the Injured Party in addition to  
15 those injuries related to the Injured Party's Pancreatic Cancer, which is alleged to  
16 have been caused by the drug(s) ingested as set forth below (put "None" if  
17 applicable): None.

18           6.     Injured Party's spouse or other party making loss of consortium claim:  
19 Karen Burgett.

20           7.     Other Plaintiff(s) and capacity, if Injured Party is deceased or  
21 otherwise incapacitated (i.e., administrator, executor, guardian, representative,  
22 conservator, successor in interest): Karen Burgett, as successor in interest.

23           8.     City(ies) and State(s) of residence of Injured Party at time of ingestion  
24 of the Drug(s): Lakeville, OH.

25           9.     City and State of residence of Injured Party at time of pancreatic  
26 cancer diagnosis (if different from above): Lakeville, OH.

27           10.    City and State of residence of Injured Party at time of diagnosis of  
28 other Injury(ies) alleged in Paragraph 5 (if different from above): Not Applicable.

11. If applicable, City and State of current residence of Injured Party (if different from above): Not Applicable.

12. If applicable, City and State of residence of Injured Party at time of death (if different from above): Lakeville,, OH.

13. If applicable, City and State of current residence of each Plaintiff, including any Consortium and or other Plaintiff(s) (i.e., administrator, executor, guardian, representative, conservator, successor in interest): Lakeville, OH.

14. Check box(es) of product(s) (the "Drugs") for which you are making claims in this Complaint:

☐ Byetta. Dates of use: \_\_\_\_\_.

☒ Januvia. Dates of use: 10/07/2010-7/6/2011.

☐ Janumet. Dates of use: \_\_\_\_\_.

☐ Victoza. Dates of use: \_\_\_\_\_.

15. Date of pancreatic cancer diagnosis: 7/28/2014.

16. If applicable, date of other injuries alleged in Paragraph 5: None.

17. If applicable, date of death: June 24, 2015.

#### DEFENDANTS NAMED HEREIN

(Check Defendants against whom Complaint is made)

☐ Amylin Pharmaceuticals, LLC

☐ Eli Lilly and Company

☒ Merck Sharp & Dohme Corp.

☐ Novo Nordisk Inc.

#### CAUSES OF ACTION

(Counts in the Master Complaint brought by Plaintiff(s))

☒ Count I – Strict Liability – Failure to Warn

☒ Count II – Strict Liability – Design Defect

☒ Count III – Negligence

☒ Count IV – Breach of Implied Warranty

1 [X] Count V – Breach of Express Warranty

2 [X] Count VI – Punitive Damages

3 [X] Count VII – Loss of Consortium

4 [X] Count VIII – Wrongful Death

5 [X] Count IX – Survival Action

6 [ ] Other Count(s): \_\_\_\_\_

7 Plead factual and legal basis for any Other Count(s) in separately numbered  
8 Paragraphs (beginning with Paragraph 18) that provide sufficient information  
9 and detail to comply with the applicable Federal Rules of Civil Procedure.  
10 \_\_\_\_\_

11 PRAYER FOR RELIEF AND, AS APPLICABLE,

12 PRAYER FOR RELIEF FOR SURVIVAL AND WRONGFUL DEATH

13 WHEREFORE, Plaintiff(s) pray(s) for relief as set forth in the Master  
14 Complaint filed in MDL No. 2452.

15 JURY DEMAND

16 Plaintiff(s) hereby [X] demands [ ] **does not** demand a trial by jury on all  
17 issues so triable.

18 Dated: September 2<sup>nd</sup>, 2015      Respectfully submitted,

19 **WATTS GUERRA LLP**

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21 Ryan L. Thompson

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28 Attorneys for Plaintiff